

ENTERED

September 16, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

SCOTT W. HESS,

Plaintiff,

VS.

STATE OF TEXAS,

Defendant.

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CIVIL ACTION NO. 1:22-CV-061

ORDER

Plaintiff Scott W. Hess, representing himself, filed this action against the State of Texas, alleging grievances with the criminal process that ultimately led to his conviction for indecent exposure to a minor. (Complaint, Doc. 1) Hess appears to seek the overturn of his conviction, although his pleading is not clear and he cites no statutory basis for his request.

The Magistrate Judge recommends that: (1) to the extent Hess is collaterally attacking his conviction, his claims should be dismissed without prejudice for lack of jurisdiction; and (2) to the extent that he is raising civil claims under the Americans with Disabilities Act, his claims should be dismissed with prejudice to their being asserted again until the conditions of *Heck v. Humphrey*, 512 U.S. 477 (1994), are met. (Report and Recommendation, Doc. 5)

On August 23, 2022, Hess filed a letter requesting the Magistrate Judge's recusal and disagreeing with certain factual statements in the Report and Recommendation. (Ltr., Doc. 14) As Hess is representing himself, the Court must "liberally construe[]" his letter. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Under this standard, Hess's letter presents both a motion to recuse the Magistrate Judge and objections to the Report and Recommendation.

I. Motion for Recusal

Hess requests the Magistrate Judge's recusal based on a purported "conflict of interest" arising out of Hess's previous action under 28 U.S.C. § 2254, in which the same Magistrate Judge recused himself. (*See* Case No. 1:13-cv-190, Doc. 35)

In the current lawsuit, Hess previously requested the recusal of the Magistrate Judge. (Motion, Doc. 9) The Court analyzed the request and ultimately denied it. (Order, Doc. 10) In his most recent letter, Hess presents no new arguments on this issue. For the reasons articulated in the Court's prior Order, the Court again concludes that the Magistrate Judge's recusal is not warranted.

II. Objections

Construing the letter as an objection to the Report and Recommendation, Hess makes two principal arguments. First, he contends that the Magistrate Judge misunderstood the allegations by wrongly concluding that Hess alleges that he was "'attacked' by police." (Ltr., Doc. 14) Second, Hess asserts that the Magistrate Judge "discredit[s]" him by describing him as "dillusional (sic)" and his claims as "fantastic". (*Id.* at 2)

Hess's first objection is without merit. The Report and Recommendation does not suggest explicitly or implicitly that Hess was attacked by police. The only reference to attacks by police in the Report and Recommendation is within a quotation from a Fifth Circuit decision describing the application of the *Heck* analysis. (R&R, Doc. 5, 6) Hess bases his initial objection on a misguided reading of the Report and Recommendation.

Hess's second objection also fails. In a footnote, the Report and Recommendation describes Hess's allegations "largely as fantastical and delusional". (Doc. 5, 5 n.2) But the Magistrate Judge does not base the recommendation on its view of Hess's allegations: "In any event, the *Heck* claim preclusion bar means the Court does not need to reach the issue of whether Hess's fantastical allegations have stated a claim to relief under the ADA." (*Id.*) Hess makes no objection to the application within the Report and Recommendation of the doctrine of *Heck* claim preclusion, and the Court finds the application of that doctrine correct.

III. Conclusion

For the reasons indicated in this Order, the Court **OVERRULES** Hess's objections and **ADOPTS** the Report and Recommendation (Doc. 5). It is:

ORDERED that the motion to recuse the Magistrate Judge as contained within Plaintiff Scott W. Hess's letter to the Court (Doc. 14) is **DENIED**;

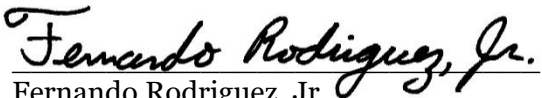
ORDERED that to the extent that Plaintiff Scott W. Hess is collaterally attacking his conviction, his claims are **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction;

ORDERED that to the extent that Plaintiff Scott W. Hess is raising civil claims under the Americans with Disabilities Act, his claims are **DISMISSED WITH PREJUDICE** to their being asserted again until the *Heck* conditions are met; and

ORDERED that Plaintiff Scott W. Hess's Motion to Proceed in Forma Pauperis (Doc. 2) is **DENIED AS MOOT**.

The Clerk of Court is directed to close this matter.

Signed on September 16, 2022.


Fernando Rodriguez, Jr.
United States District Judge